

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION**

UNITED STATES OF AMERICA,

Criminal No. 06-211(1) MJD/AJB

Plaintiff,

v.

**REPORT AND RECOMMENDATION**

KEVIN JOSEPH FENNER,

Defendant.

Jeffrey S. Paulsen, Esq., Assistant United States Attorney, for the plaintiff, United States of America;

William M. Orth, Esq., for the defendant, Kevin Joseph Fenner.

This action came on for hearing before the Court, Magistrate Judge Arthur J. Boylan, on August 11, 2006, at the U.S. Courthouse, 300 South Fourth St., Minneapolis, MN 55415.

Defendant Kevin Joseph Fenner presented motions for discovery and disclosure and further moved for suppression of evidence. Defendant's Motion for Suppression of Physical Evidence [Docket No. 35] is before the court on four-corners review of two search warrants that were received as exhibits at the hearing, and the motion is herein submitted to the district court on report and recommendation.<sup>1</sup>

Based upon the file and documents contained therein, along with exhibits received at

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<sup>1</sup> United States Magistrate Judge Arthur Boylan, the judge presiding at the hearing in this matter, was the judicial officer who issued the search warrants that are now at issue. Since the motion to suppress evidence seized pursuant to those warrants is before the court on four-corners analysis, those exhibits were provided to United States Magistrate Judge Susan Nelson for independent review, and this report and recommendation to the district court is made by Magistrate Judge Nelson based upon her review of the documents.

hearing, the Magistrate Judge makes the following:

**Findings**

On June 23, 2006, United States Magistrate Judge Arthur Boylan issued separate warrants to search the residence at a specified address in St. Paul, Minnesota, including an unattached garage (Hearing Exh. No. 1), and a particularly identified dark blue vehicle (Hearing Exh. No. 2). The residence and the vehicle are further identified in the supporting affidavits as a residence owned by Kevin Fenner and a vehicle owned by Mr. Fenner. Separate but identical applications and affidavits were submitted in support of each of the warrants. Each search warrant identified the objects of the warrant as controlled substances, including cocaine, crack cocaine, heroin and fentanyl; receipts and documents relating to the sale of controlled substances; records relating to the transportation and distribution of controlled substances; address and telephone books; financial records and materials; travel documents; safe deposit box rental agreements and keys; money and valuables; photographs; drug packaging equipment and supplies; firearms and ammunition; electronic and communications devices; and materials evidencing constructive possession of seized items. Each warrant was issued on the basis of probable cause contained in the Affidavit of DEA Task Force Officer Ronald Lehner, including reports from multiple reliable confidential informants, surveillance information, two controlled drug buys, and public records checks. Certain informant reports were corroborated by checks on defendant's use of rental vehicles.

Based upon the foregoing Findings, the Magistrate Judge makes the following:

**Conclusions**

Evidence seized pursuant to separate warrants to search the residence at a specified

address in St. Paul, Minnesota, including an unattached garage (Hearing Exh. No. 1), and a particularly identified dark blue vehicle (Hearing Exh. No. 2), was not unlawfully obtained in violation of the constitutional rights of defendant Kevin Joseph Fenner. Both search warrants were issued on June 23, 2006, and were based upon sufficient probable cause as stated in the Affidavit of DEA Task Force Officer Ronald Lehner and as determined by United States Magistrate Judge Arthur Boylan. Each warrant properly and sufficiently identified the location of the search and the items to be seized. The search warrants in this matter were lawfully issued and there is no requirement for suppression of evidence seized pursuant to either warrant.

Based upon the foregoing Findings and Conclusions, the Magistrate Judge makes the following:

### **RECOMMENDATION**

The Court **hereby recommends** that defendant Kevin Joseph Fenner's Motion to Suppress Physical Evidence be **denied** [Docket No. 35].

Dated: August 11, 2006

s/Susan Richard Nelson  
Susan Richard Nelson  
United States Magistrate Judge

Pursuant to Local Rule 72.1(c)(2), any party may object to this Report and Recommendation by filing with the Clerk of Court, and by serving upon all parties, written objections which specifically identify the portions of the Report to which objections are made and the bases for each objection. This Report and Recommendation does not constitute an order or judgment from the District Court and it is therefore not directly appealable to the Circuit Court of Appeals. Written objections must be filed with the Court before August 28, 2006.

Unless the parties stipulate that the District Court is not required by 28 U.S.C. § 636 to

review a transcript of the hearing in order to resolve all objections made to this Report and Recommendation, the party making the objections shall timely order and file a complete transcript of the hearing within ten days of receipt of the Report.